

**VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
OFFICE OF PRODUCT & INDUSTRY STANDARDS**

PO Box 1163, Richmond, VA 23218

Phone: (804) 786-2476 Fax (804) 786-1571

www.vdacs.virginia.gov

Who needs a Commission Merchant license?

Any person who conducts or operates an auction market, or who shall receive farm products for sale on commission, or contract with the producer thereof for farm products to be sold on commission or for a fee, or accepts in trust from the producer thereof for the purpose of sale, or who shall sell or offer for sale on commission, or shall solicit consignments of any kind of farm products, or who shall in any way handle for the account of or as an agent for the producer thereof any kind of farm products; provided that any person shall be deemed to be an agent or the producer, unless a specific price has been agreed upon by both parties before shipment or delivery by the producer for resale.

Bond Required

The application for a Commission Merchant shall be accompanied by a license fee of \$10 and a good and sufficient bond in the sum of \$3,000 for all applications other than for livestock auction markets, in which case the application, together with the fee shall be accompanied by a good and sufficient bond in the sum of \$5,000 when the average daily gross commission business is \$5,000 or less, with \$1,000 added to the bond for each additional \$5,000 average daily gross commission business done for the previous year with a maximum bond of \$10,000.

A bond is not required for any person to conduct or operate any tobacco warehouse or similar place where dark or flue-cured tobacco is sold at auction by or through any duly licensed auctioneer or of any person operating a livestock auction market or stockyard which has been posted by the Secretary of Agriculture of the United States and is being operated under and pursuant to the terms and provisions of the Packers and Stockyards Act, 1921 (42 Stat. 159) www.gipsa.usda.gov and the laws amendatory thereof. (Section 3.16-699, Code of Virginia 1950 as amended)

**VIRGINIA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES
PO BOX 526
RICHMOND VA 23218-0526**

APPLICATION FOR COMMISSION MERCHANTS LICENSE

Application is hereby made by the undersigned for a license to do business as a Commission Merchant in farm produce as defined by Section 3.1-692 of the Code of Virginia (1950), as amended. There is herewith tendered in the sum of \$10.00, the license fee prescribed by law. Make check payable to the Treasurer of Virginia.

Code 862-02137

Character of Products to be Handled: _____

Business Organization

Individual or Partnership

Firm or Trade Name	
Address of Record	Telephone Number
Physical Address of Business	Telephone Number
Name and complete mailing address of partner(s) or individual	
Name and complete mailing address of partner(s) or individual	
Name and complete mailing address of partner(s) or individual	

Corporation

Firm or Trade Name		
Address of Record	Telephone Number	
Physical Address of Business	Telephone Number	
Domestic or Foreign Corporation _____	Capital Stock Authorized \$ _____	Capital Stock Fully Paid \$ _____

Officers Names and Addresses:

President	PO Box/Street Address	City	State	Zip
Vice President	PO Box/Street Address	City	State	Zip
Secretary/Treasurer	PO Box/Street Address	City	State	Zip

Full Name and first-class mailing address of a person or persons who are authorized to receive service of process on behalf of the organization:

Full Name	PO Box/Street Address	City	State	Zip
Full Name	PO Box/Street Address	City	State	Zip

YOU MUST PROVIDE THE FOLLOWING INFORMATION:

Schedule of Maximum Commissions and Charges for Service in connection with produce handled on account or as Agent of the consignor. Optional: Attach printed commission sheet.

IT IS HEREBY AGREED that the commissions and charges herein named will not be changed or varied during the term of said license, except by and through a written contract or agreement between the said commission merchant and the consignor of said farm products.

Given under _____ hand(s) and seal(s) this the _____ day of _____, 20_____.

FIRM NAME

By _____

Title

By _____

Title

By _____

Title

COMMONWEALTH OF VIRGINIA

COUNTY OR CITY OF _____ to-wit:

This day, personally appeared before me in my county or city aforesaid, _____,
_____ and _____ the duly authorized representatives or officers, of the
person, firm or corporation of the above named applicant, and made oath in due form of law, that the matters and
statements herein contained are true to the best of their knowledge and belief and that he or they are duly authorized to
execute the foregoing instrument.

Given under my hand this _____ day of _____, 20_____.

My Commission expires _____

NOTARY PUBLIC

BOND
AS COMMISSION MERCHANT IN VIRGINIA

STATE OF _____

BOND NO. _____

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS: That we _____
See instructions on back page

as Principal and _____,
Name of Surety Company

as Surety, are held and firmly bound unto the COMMISSIONER OF THE VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES of the COMMONWEALTH OF VIRGINIA and his successors in office, for the use and benefit of every person establishing legal rights hereunder, in the full and just sum of _____ Dollars, (\$ _____), to the payment of which well and truly to be made, we hereby bind ourselves, our heirs, administrators, executors, successors and assigns firmly by these presents.

WHEREAS by *Sections 3.1-693 and 3.1-696, Code of Virginia (1950) as amended*, Commission Merchants are required to obtain a license from the Commissioner of the Virginia Department of Agriculture and Consumer Services and to give bond in such form and amount as shall be approved by the Commissioner, conditioned upon a full compliance with the provisions of the said Code, as amended.

NOW, THEREFORE, the condition of this obligation is such that if the above named principal shall faithfully and truly account for and make payment to producers, their agents or representatives, for all farm products warehoused, bought from or handled or sold for such producers, their agents or representatives, as required by Section 3.1-696 and 3.1-700, Code of Virginia (1950) as amended, then this obligation to be void, otherwise to remain in full force and effect.

The aggregate accumulated liability under this bond shall in no event exceed the penal sum named herein, for any and all claims which may accrue during the term hereof.

The inception of this Bond begins _____, 20____, and continues in effect through December 31, 20____. (Must run concurrently with Commission Merchant License)

The Surety may withdraw from this bond by giving 30 days written notice, by registered mail to the Commissioner of the Virginia Department of Agriculture and Consumer Services, provided such withdrawal shall not release said Surety from any liability existing hereunder at the time of the effective date of said withdrawal.

SIGNED, SEALED and dated this _____ day of _____, 20_____.

_____(SEAL) _____(SEAL)
Principal Surety

By _____ By _____

Attach copy of Power-of-Attorney for the person executing this bond for the surety.

I. INFORMATION FOR THE PREPARATION AND EXECUTION OF THIS BOND

A. The name of Principal on the bond should be correctly stated, and should precisely agree with the name of applicant on the application for license as Cotton Handler (Any material variation may delay issuance of license.)

B. The name in which business is conducted should follow the name or names of the Principal where the applicant does business in a fictitious name.

Examples:

Individual operating in own name: **"Henry Smith"**

Individual owner operating in another name: **"Henry Smith d/b/a City Produce"**

Partners operating in another name: **"John Doe, Richard Roe, and Mary Roe d/b/a/ Acme Produce"**

Corporation operating in own name: **"Chase & Company (a corporation)"**

Corporation operating in another name: **"John Doe Enterprises, Inc. d/b/a Superior Produce"**

II. EXECUTION BY PRINCIPAL

A. If the Principal of this bond is:

1. An individual--this bond must be signed by the Principal.
2. A partnership--this bond should be executed in the name of the partnership and signed by the partners, and must be signed by at least one of the partners.
3. A corporation--this bond must be executed in the name of the Corporation, by its President or Vice President, with impression of corporate Seal affixed, and attested by Secretary or Assistant Secretary of the corporation.

III. EXECUTION BY SURETY: Should be by a properly authorized person, whose title should be shown with impression of the corporate seal of the surety affixed, and a copy of the Power-of-Attorney of that person attached to the bond.

IV. CONTINUATION CERTIFICATES ARE ACCEPTABLE

V. ATTACH POWER-OF- ATTORNEY

MAIL EXECUTED BOND TO:

Virginia Department of Agriculture and Consumer Services
Office of Product & Industry Standards
PO Box 1163
Richmond, VA 23218

Code of Virginia

Title 3.1

Agriculture, Horticulture and Food

Chapter 26

Sale of Farm Produce

Article 2

Commission Merchants

§ 3.1-692. Definitions.

Whenever used in this article:

The term "person" shall mean and include an individual person, firm, partnership, corporation, association, or syndicate, their lessees, trustees, or receivers.

The term "commission merchant" shall mean any person, who conducts or operates an auction market, or who shall receive farm products for sale on commission, or contract with the producer thereof for farm products to be sold on commission or for a fee, or accept in trust from the producer thereof for the purpose of sale, or who shall sell or offer for sale on commission, or shall solicit consignments of any kind of farm products, or who shall in any way handle for the account of or as an agent of the producer thereof any kind of farm products; provided, that any person shall be deemed to be an agent of the producer, unless a specific price has been agreed upon by both parties before shipment or delivery by the producer for resale.

The term "commission merchant" shall not include any cooperative corporation or association organized under or that has adopted the provisions of or domesticated in Virginia pursuant to the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, otherwise known as the "cooperative marketing" act, so long as such corporation or association meets the requirements of and operates in accordance with the provisions of such sections and acts amendatory thereof; nor shall it include any association or organization of farmers, including produce exchanges, not incorporated under or subject to the provisions of the "cooperative marketing" act, organized and maintained by farmers for mutual help in the marketing of their produce and not for profit; nor any person, buying vegetables, viticultural or horticultural farm products for the purpose of reselling the same in dried, canned or other preserved form; nor shall it include the sale of farm produce at public auction by a duly licensed auctioneer, acting as the agent of another to whom such farm produce shall have been consigned; nor to the sale by sheriffs and other officers and fiduciaries and court officials; nor to seed sold at retail; nor shall it apply to persons appropriately licensed pursuant to the provisions of Article 3 (§ 3.1-722.1 et seq.) of Chapter 26 of this title.

The term "auction market" shall be construed to be the same as "livestock auction market," "livestock sales ring," "livestock auction," or "livestock auction ring," and means a place or establishment conducted or operated for compensation or profit as a private or public market, consisting of pens, or other enclosures, whether covered or uncovered, and their appurtenances, in which livestock are received, held or kept for sale or where livestock is sold or offered for sale either privately or at public auction, except, the provisions of this article shall not apply to, (a) the premises of any butcher, packer or processor who receives livestock exclusively for immediate slaughter, (b) farm sales, (c) sales by Four-H clubs or (d) sales by livestock breeders' associations or by exposition societies.

The term "Commissioner" means the Commissioner of Agriculture and Consumer Services.

The term "licensee" means any person, as herein defined, who has applied for or been granted license to operate, conduct, or carry on the business of a commission merchant.

The term "farm produce" or "farm products" shall mean and include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and other products ordinarily produced on farms.

(Code 1950, § 3-534; 1966, c. 702; 1975, c. 505; 1977, c. 21.)

§ 3.1-693. License required.

It shall be unlawful for any person to act as, operate, or carry on the business of, a commission merchant without first obtaining a license as herein provided.

(Code 1950, § 3-535; 1966, c. 702.)

§ 3.1-694. Application for license to be in writing.

Application for license hereunder shall be made to the Commissioner in writing, signed and sworn to by the applicant.

(Code 1950, § 3-536; 1966, c. 702.)

§ 3.1-695. Contents of application.

The application shall state the name of the city or town where the business of commission merchant is to be conducted, the street and number of the building if practicable, the character of the products which will be handled by the applicant; and if made by a copartnership, the full names of each of the partners comprising the copartnership, and their respective addresses, together with the firm or trade name under which the business is to be conducted; and if made by a corporation the application shall state whether domestic or foreign, the amount of its capital stock as provided in its articles of incorporation, the amount of its capital stock fully paid in, and the names of its officers, together with the name or names of such person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant. Such applicant shall further satisfy, upon demand, the Commissioner of his or its character, responsibility and good faith in seeking to carry on a commission merchant's business within this Commonwealth.

(Code 1950, § 3-537; 1966, c. 702.)

§ 3.1-696. Fee and bond to accompany license.

Applications shall be accompanied by a license fee of \$10, and a good and sufficient bond in the sum of \$3,000 for all applications other than for livestock auction markets, in which case the application, together with the fee above required, shall be accompanied by a good and sufficient bond in the sum of \$5,000, when the average daily gross commission business is \$5,000 or less, with \$1,000 added to the bond for each additional \$5,000 average daily gross commission business done for the previous year with a maximum bond of \$10,000, which entitles the applicant to a license to expire on December 31, next following.

(Code 1950, § 3-538; 1952, c. 387; 1966, c. 702.)

§ 3.1-697. Applications for renewal licenses.

Upon the application accompanied by evidence of payment of renewal premium continuing the bond herein required in full force and effect, and the payment of a fee of ten dollars on or before the first day of January following the date of expiration of any license hereunder issued, the applicant shall be entitled to renewal license to expire one year from the date of expiration of the old license. All applications for renewal licenses shall be made in the same manner as application for original license.

(Code 1950, § 3-539; 1966, c. 702.)

§ 3.1-698. Disposition of sums received for licenses.

All sums received by the Commissioner for such license fees shall be paid into the state treasury to the credit of the general fund.

(Code 1950, § 3-540; 1966, c. 702.)

§ 3.1-699. Bond not required for certain auction sales of tobacco or livestock.

Notwithstanding the foregoing provisions of this article, no bond shall be required hereunder of any person to conduct or operate any tobacco warehouse or other similar place where dark or flue-cured tobacco is sold at auction by or through any duly licensed auctioneer or of any person operating a livestock auction market or stockyard which has been posted by the Secretary of Agriculture of the United States and is being operated under and pursuant to the terms and provisions of the Packers and Stockyards Act, 1921 (42 Stat. 159) and the laws amendatory thereof.

(Code 1950, § 3-541; 1960, c. 250; 1966, c. 702.)

§ 3.1-699.1. Agreements with United States Secretary of Agriculture; powers and duties of Commissioner as to bonds filed with Secretary.

The Commissioner may make such agreements with the Secretary of Agriculture of the United States, hereinafter referred to as the Secretary, or his representative as are necessary to effectuate the purposes of the Packers and Stockyards Act of 1921, (42 Stat. 159), as amended. The Commissioner may act as trustee of the bonds or other security filed with the Secretary, and in such capacity the Commissioner is fully empowered to settle, allow or reject claims arising against the bonds or other security, to rely on the investigative reports and recommendations of the Secretary or his representative, and, for the purposes of settlement of claims, to use the administrative powers and processes of this article. The Commissioner may institute and prosecute suits or actions in the name of the Commonwealth on behalf of claimants known and approved by the Commissioner in any appropriate court. Notwithstanding any other provision of law, the Commissioner shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by him.

(1976, c. 44; 1985, c. 354.)

§ 3.1-700. Execution and terms of bond; action thereon.

The bond herein referred to shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this Commonwealth as surety or by such personal surety as may be approved by the circuit court of the county or corporation or hustings court, or the judge thereof in vacation, of the county or city in which the applicant resides or has his principal office. The bond shall be conditioned upon compliance with the provisions of this law and upon the faithful and honest handling of farm products in accordance with the terms of this law. The bond shall be to the Commonwealth of Virginia in favor of every consignor of farm products. Any consignor of farm products claiming to be injured by the fraud, deceit or negligence of any commission merchant may bring action therefor upon the bond against either the principal, or the surety, or both in any court of competent jurisdiction to recover the damages caused by such fraud, deceit or negligence, or the failure to comply with the provisions of this article, or to make prompt and accurate settlement with such consignor.

(Code 1950, § 3-542; 1966, c. 702.)

§ 3.1-700.1. Additional duties and powers of Commissioner.

The Commissioner may accept the proceeds from any bond and deposit the proceeds in the state treasury at interest in favor of the bond claimants. The Commissioner may institute and prosecute suits or actions in the name of the Commonwealth on behalf of claimants known and approved by him in any appropriate court for any purpose in connection with the collection or distribution of the bond or its proceeds. It shall be the duty of any person having a claim against a commission merchant to notify the Commissioner of his claim. The Commissioner shall have no duty to prosecute any claim unless he has actual notice thereof and believes the claim to be valid. If the Commissioner believes the claim to be invalid, in whole or in part, he shall notify the claimant. The claimant shall then have his remedy pursuant to § 3.1-700. Notwithstanding any other provision of law, the Commissioner shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by him.

(1985, c. 354.)

§ 3.1-701. Schedule of commissions and charges to be filed.

The applicant shall file with the Commissioner at the time of furnishing the bond a schedule of his maximum commissions and charges for service in connection with the produce handled on account of or as agent for the parties. Such designated commissions and charges shall not be changed or varied for one year thereafter, except by and through a written contract and agreement between the commission merchant and the consignors of farm products; provided, however, a person operating a livestock auction market or stockyard which has been posted by the Secretary of Agriculture of the United States and is being operated under and pursuant to the terms and provisions of the Packers and Stockyards Act, 1921, (42 Stat. 159), and the laws amendatory thereof, may change his schedule of maximum commissions and charges if such changes are filed with the Secretary of Agriculture of the United States and is approved. These changes also are to be posted with the Commissioner of Agriculture and Consumer Services of Virginia.

(Code 1950, § 3-543; 1966, c. 702; 1968, c. 306.)

§ 3.1-702. Investigation of transactions by Commissioner.

For the purpose of enforcing the provisions of this article, the Commissioner, upon the verified complaint of any interested party shall, or upon his own motion may, either personally or through his duly authorized agent or agents investigate any transaction involving solicitation, receipt, sale or attempted sale of farm products by any person or persons acting or assuming to act, or attempting to act, as a commission merchant; failure of any commission merchant to make proper and true account of sales and settlement thereof as in this article required; any transaction wherein produce consigned to a commission merchant is disposed of to a person, firm or corporation composed substantially of the same persons, as stockholders, members, or otherwise, who compose the commission merchant; the intentional making by any commission merchant of false statements as to condition, grade, or quality of any farm products received or in storage; the intentional making by any commission merchant of false statements as to market condition; the failure of any commission merchant to make payment for farm products within the time required by this law; or to any other injurious transaction arising out of the sale of farm produce on commission.

(Code 1950, § 3-544; 1966, c. 702.)

§ 3.1-703. Complaint to Commissioner by consignor.

When a consignor of farm products to a commission merchant shall have filed a complaint with the commission merchant within ninety days after date of sale, and shall have failed to obtain a satisfactory settlement thereof within ten days after the filing of the complaint, a verified complaint setting forth the above facts may be filed with the Commissioner, who shall personally or through his duly authorized agent, thereupon undertake to effect settlement of the matter involved.

(Code 1950, § 3-545; 1966, c. 702.)

§ 3.1-704. Hearing and order of Commissioner on such complaint.

If the Commissioner or his agent, within a reasonable time, is unable to effect settlement to the satisfaction of the parties involved, he or his agent shall, after giving the parties at least five days' notice as to time and place, which shall be in the city or town in which is situated the place of business of the commission merchant or in which the transaction complained of occurred, or at the option of the parties, in such other place as they may mutually agree, proceed to hear evidence concerning the matter involved, and thereafter either dismiss the complaint or enter such order against the commission merchant as the Commissioner shall deem proper to afford the consignor relief. Any such order shall be complied with within the time specified therein; provided, however, such period of time shall not be less than five days.

(Code 1950, § 3-546; 1966, c. 702; 1976, c. 164.)

§ 3.1-705. Commissioner to have right of entry in making investigations.

In furtherance of any such investigation, inspection or hearing the Commissioner, or his duly authorized agent, shall have full authority to make any and all necessary investigations relative to the complaint or matter being investigated, and they shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities in which any farm products are kept, stored, handled, or transported.

(Code 1950, § 3-547; 1966, c. 702.)

§ 3.1-706. Commissioner may administer oaths, take testimony and compel attendance.

The Commissioner or his duly authorized agent shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him or his agents, together with all books, memoranda, papers, and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(Code 1950, § 3-548; 1966, c. 702.)

§ 3.1-707. Disobedience of orders of Commissioner constitutes contempt.

All parties disobeying the orders or subpoenas of the Commissioner or his duly authorized agent, shall be guilty of contempt and shall be certified to any court of competent jurisdiction for punishment for such contempt.

(Code 1950, § 3-549; 1966, c. 702.)

§ 3.1-708. Copies of papers in Commissioner's office as prima facie evidence.

Copies of all records, inspection certificates, certified reports and all papers on file in the office of the Commissioner shall be prima facie evidence of the matter contained.

(Code 1950, § 3-550; 1966, c. 702.)

§ 3.1-709. Grounds for refusal or revocation of license.

The Commissioner may, in the public interest, refuse to grant a license, delay the issuance of a license, or revoke any license already granted when he shall be satisfied of the existence of any of the following causes:

(a) Where a money judgment has been entered against such commission merchant and upon which execution has been returned unsatisfied.

- (b) Where false, fraudulent or improper charges or returns have been made by the licensee, for the handling, sale or storage of farm products, or for the rendering of any service in connection therewith.
- (c) Where the licensee has failed or refused to render a true account of sales, or to make settlement thereon promptly and within the time and in the manner required by this law.
- (d) Where the licensee has made false or misleading statements as to the grade, condition, quality or quantity of farm products received, handled, stored or held by him for sale on commission.
- (e) Where the licensee has made false or misleading statements as to market conditions.
- (f) Where there has been combination or combinations to fix prices.
- (f1) Where the licensee has, directly or indirectly, purchased for his, or its own account farm products received by him or it, upon consignment, without prior authority from consignor in writing and at a price agreed to, fixed by the consignor. This subsection shall not apply to tobacco warehousemen purchasing tobacco through competitive bidding during the time tobacco is being sold at auction nor the operators of livestock auction markets who are prohibited from purchasing consigned livestock under the federal Packers and Stockyards Act of 1921 (42 Stat. 159).
- (g) Where the licensee has made fictitious sales or has been guilty of collusion to defraud the consignor.
- (h) Where the licensee, to whom any farm products have been consigned, reconsigned such farm products to another person, either in the city or town in which is located the licensee, or to some other point within or without the Commonwealth, unless consent of the consignor has been first obtained and in writing, or notice given in writing to the consignor by the consignee that all or a part of such shipment was reconsigned.
- (i) Where the licensee sells farm products consigned to him or it, to another person, owned or controlled by him or it, or in which such licensee may be interested financially or otherwise, either directly or indirectly, unless notice is given, in writing, to the consignor by the licensee that all or a part of such shipment was sold to a person in which he or it is financially interested.
- (j) Where the licensee was intentionally guilty of fraud or deception in the procurement of such license.
- (k) Where the licensee has failed or refused to file with the Commissioner a schedule of his maximum commissions and other charges for services in connection with the produce handled on account of or as agent of another as prescribed in this article, prior to the first day of February of each year.
- (l) When the licensee has failed or refused to obey and comply with any order of the Commissioner entered pursuant to the provisions of § 3.1-704 within the time specified in such order, or in case an appeal is taken from such action of the Commissioner, then within ten days from the time such order became final.
- (m) When the licensee has failed or refused to comply with any assurance the Commissioner has required pursuant to § 3.1-695.
- (n) When the licensee or his agents, contractors, employees, or persons acting in the capacity of his agents, contractors or employees, shall have violated any provision of this section.

(Code 1950, § 3-551; 1966, c. 702; 1979, c. 389.)

§ 3.1-710. Publication of revocation.

Where a license shall have been revoked, the Commissioner shall cause to be published in one or more daily papers to be selected by him, once a week for two successive weeks, the fact of such revocation and the cause therefor, and also in the next issue of the Agricultural Bulletin issued by the Commissioner.

(Code 1950, § 3-552; 1966, c. 702.)

§ 3.1-711. Certified copy of license; fee therefor; posting of license during sale periods.

A certified copy of an issued license may be procured by the holder of the original upon payment of a fee of one dollar therefor, and the original or a certified copy of the license shall be posted during sale periods in a conspicuous place on the premises where the business is conducted.

(Code 1950, § 3-553; 1966, c. 702.)

§ 3.1-712. Appeal from orders and actions of Commissioner.

Any action of the Commissioner or his agent in entering any order pursuant to § 3.1-704, or in refusing to grant a license, or in revoking a license already granted to such commission merchant or merchants, or refusing to renew a license, shall be subject to the right of appeal in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

(Code 1950, § 3-554; 1966, c. 702; 1976, c. 164; 1986, c. 615.)

§ 3.1-713. Records to be kept by commission merchant.

It shall be the duty of every commission merchant, having received any farm products for sale on commission, promptly to make and keep a correct record, showing in detail the following with reference to the handling, sale, or storage of such farm products:

- (a) The name and address of the consignor;
- (b) The date received;
- (c) The condition, grade and quantity on arrival;
- (d) The date of such sale for the account of the consignor;
- (e) The price for which sold;
- (f) An itemized statement of the charges to be paid by the consignor in connection with the sale;
- (g) Each consignment of farm products shall be given a lot number or other identifying mark, which number or mark shall appear on all sales tags or tickets or on any other essential records needed to show what the products actually sold for; and
- (h) Records relating to sales of "farm produce" or "farm products" at auction, including sales tags, tickets or bills, shall be sequentially numbered and each such sequentially numbered record shall be properly accounted for in the operations of the commission merchant. Any record which is altered in any fashion must bear the full signature of the person authorized to make, and who is responsible for, the alteration.

(Code 1950, § 3-555; 1966, c. 702; 1979, c. 389.)

§ 3.1-714. Detailed statements must be kept of claims for overcharges or damages filed by commission merchant for consignor.

A detailed statement shall be kept on file of the filing of any claim or claims which have or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such farm products by the act or acts, or neglect, or failure of such person, and such records

shall be open to the inspection of the Commissioner and the consignor or consignors of farm products for whom such claim or claims are made; provided that the money returns, if any, collections, or damages received by the commission merchant for such person for and on behalf of consignor or consignors of farm products by reason of the overcharges, damages or deterioration shall forthwith be paid to the consignor or consignors of farm products less charges for collection thereof, in accordance with the schedule of charges filed under § 3.1-701.

(Code 1950, § 3-556; 1966, c. 702.)

§ 3.1-715. Record and account, together with remittance for each sale, to be delivered to consignor.

A copy of the record and account of sales of farm products, together with remittances in full of the amount realized by such sales, less the agreed commissions and other charges, shall be delivered to the consignor upon the consummation of the sale together with all moneys received by him in payment for any consignment of farm products, less the agreed commission and other charges, within ten days after receipt of the moneys by the commission merchant, unless otherwise agreed in writing; provided, however, that the names and addresses of purchasers need not be given unless demanded in cases of complaint.

(Code 1950, § 3-557; 1966, c. 702.)

§ 3.1-716. Copies of records to be kept by commission merchant.

It shall also be the duty of every commission merchant to retain a copy of all records, including sales tags or tickets, account of sales, other records covering each transaction for a period of three years from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the Commissioner, or his duly authorized agents, and the interested consignor, or any authorized representative of either.

(Code 1950, § 3-558; 1966, c. 702; 1968, c. 306; 1979, c. 389.)

§ 3.1-717. Certificate establishing condition, quality, grade, etc., to be furnished by Commissioner in event of dispute.

In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity or weight of any lot, shipment or consignment of farm products, it shall be the duty of the Commissioner to furnish, upon the payment of the actual necessary expenses therefor, to be paid by requesting party, a certificate establishing the condition, quality, grade, pack, quantity or weight of such lot, shipment or consignment; such certificate shall be prima facie evidence in all courts of this Commonwealth as to the recitals thereof at the time such inspection was made. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned.

(Code 1950, § 3-559; 1966, c. 702.)

§ 3.1-718. Offenses and punishment therefor.

Any person who shall assume or attempt to act as a commission merchant, as defined by this article, without license, or any person who being a commission merchant and duly licensed, or any person who shall violate any of the provisions of the subsections which follow in this section shall be guilty of a Class 1 misdemeanor:

(a) Impose false charges for handling or for services in connection with farm products;

(b) Fail to account promptly, correctly, fully and properly and to make settlement therefor as in this article provided;

- (c) Make false and misleading statements as to market conditions with intent to deceive;
- (d) Make fictitious sales or shall be guilty of collusion to defraud the consignor, or enter into any combination or combinations to fix prices;
- (e) Directly or indirectly purchase for his or its own account, farm products, received by him or it on consignment without prior authority from the consignor in writing. This subsection shall not apply to tobacco warehousemen purchasing tobacco through competitive bidding during the time tobacco is being sold at auction nor the operators of livestock auction markets who are prohibited from purchasing consigned livestock under the federal Packers and Stockyards Act of 1921 (42 Stat. 159);
- (f) Intentionally make false statements as to grade, condition, markings, quality or quantity of farm products shipped or packed in any manner;
- (g) Reconsign such farm products as have been consigned to him to another person, either in the city or town in which the licensee is located, or to some other point within or without the Commonwealth, unless consent of the consignor has been first obtained and in writing, or notice given in writing to the consignor by the consignee that all or a part of such shipment was reconsigned;
- (h) Sell such farm products consigned to him to another person owned or controlled by him, or in which such licensee may be interested financially or otherwise, either directly or indirectly, unless notice is given, in writing, to the consignor by the commission merchant that all or a part of such shipment was sold to a person in which he or it is financially interested;
- (i) Be guilty of fraud or deception in the procurement of such license;
- (j) Fail or neglect to give written notice immediately to the Commissioner and the surety on the bond of such commission merchant, of any changes or alterations in the style, name or personnel of the person to whom such license has been issued; or
- (k) Fail to comply in every respect with the provisions of this article.

(Code 1950, § 3-560; 1966, c. 702; 1979, c. 389.)

§ 3.1-719. Duty of attorneys for the Commonwealth.

It is hereby made the duty of the several attorneys for the Commonwealth of this Commonwealth to prosecute all violations of this article subject to prosecution in their respective cities or counties.

(Code 1950, § 3-561; 1966, c. 702.)

§ 3.1-720. Venue.

Civil suits and criminal prosecutions arising by virtue of this article or any of its provisions may be commenced and tried in either the city or county where the products were received by the commission merchant, or within the city or county in which the principal place of business of such commission merchant is located within the Commonwealth, or within the city or county in which the violation occurred.

(Code 1950, § 3-562; 1966, c. 702.)

§ 3.1-721. Employment of assistants and adoption of rules.

The Commissioner is hereby empowered to employ such persons as may be necessary for the enforcement of the provisions of this article and for the collection of all fees herein prescribed. The State Board of Agriculture and Consumer Services may adopt all needful rules and regulations for the enforcement of this article.

(Code 1950, § 3-563; 1966, c. 702; 1979, c. 389.)

§ 3.1-722. Expenses.

All expenses incident to the enforcement of the provisions of this article shall be paid from such funds as may be appropriated for this purpose and in such manner as may be prescribed by law.

(Code 1950, § 3-564; 1966, c. 702.)